

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SUSAN H. MATTHEWS

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Appeal No. 2002-0070  
Application No. 09/537,949

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ON BRIEF

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Before ABRAMS, STAAB, and McQUADE, Administrative Patent Judges.  
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

Susan H. Matthews appeals from the examiner's final rejection of claims 20, 22-30, 39 and 40, all the claims currently pending in the application. The amendment filed subsequent to the final rejection canceling claims 21 and 41 and amending claims 20, 22-24, 26 and 39 has been entered.

Appellant's invention pertains to a support pillow "in kit form"<sup>1</sup> (claims 20, 22-25, 39 and 40) and to a method for storing a curved support pillow (claims 26-30). An understanding of appellant's invention can be derived from a reading of exemplary claims 20 and 26, which appear in the Appendix to appellant's brief.

The references relied upon by the examiner as evidence of obviousness are:

Fraser	2,995,845	Aug. 15, 1961
Blais	3,796,304	Mar. 12, 1974
Matthews	5,261,134	Nov. 16, 1993
Redewill	5,313,678	May 24, 1994

The following rejections under 35 U.S.C. § 103(a) are before us for review:

- (1) claims 20, 22, 24 and 25, rejected as being unpatentable over Matthews in view of Blais;
- (2) claims 23, 26, 27, 29, 30, 39 and 40, rejected as being unpatentable over Matthews in view of Blais and Fraser; and
- (3) claim 28, rejected as being unpatentable over Matthews in view of Blais, Fraser and Redewill.

Reference is made to appellant's brief (Paper No. 12) and to the examiner's answer (Paper No. 13) for the respective positions of appellant and the examiner regarding the merits of these rejections.

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<sup>1</sup>The preamble of claims 20 and 39 state that the claims are directed to "A support pillow in kit form."

### Discussion

Looking first at the rejection of claims 20, 22, 24 and 25 as being unpatentable over Matthews in view of Blais, Matthews, the examiner's primary reference in each of the rejections, is appellant's own patent and is directed to a support pillow 10 comprising a curved pillow body having a medial region 15 and a pair of opposing arms 18, 20 that extend from a medial region to define a generally open well 16. The examiner concedes (answer, page 3) that Matthews does not disclose a support pillow that includes "a central holder removably secured to the medial region of the pillow body, with the central holder comprising a piece of material surrounding and substantially covering the medial region, wherein the material tapers in a direction toward the open well," as called for in claim 20. The examiner turns to Blais to overcome this deficiency.

Blais pertains to packaging for cordsets (i.e., electrical extension cords). Blais provides a collar 48 secured about the mid-section of the cordset. The collar holds the strands of cord at the mid-section so that the cord is more closely packed at the mid-section than at the looped ends of the cordset. As shown in Figures 1-4 and as described at col. 4, lines 30-37, a conventional fastener such as a wire staple 50 may be used to fastened the ends of the collar together. The packaged cordset resists unraveling in storage and display yet can be readily unpackaged and extended prior to use, is adapted for hanging display without unraveling, and is adapted for nesting in a bin display without appreciable entanglement with other cordsets in the bin (col. 1, line 62, through col. 2, line 3). In the "Background" section of the specification, Blais states (col. 1, lines 26-29) that prior art

wrappings for cordsets usually included printed information concerning such matters as price, electric power carrying capacity, and cord length.

In proposing to combine Matthews and Blais to reject claim 20, the examiner submits that “it would have been obvious in view of Blais to surround a mid portion of the pillow of Matthews for providing advertising and information thereon relating to the pillow” (answer, page 3). In a similar vein, the examiner also contends that “it is conventional to package an article in a simple holder such as taught by Blais . . . to display print information concerning the article. The motivation to combine the references together is to provide an economical package yet allowing a user to inspect the pillow without interfering with the holder” (answer, page 5).

Appellant argues, first, that Blais constitutes nonanalogous art. However, in the view we take in this case, even if we assume that Blais is analogous art, the obviousness rejections of the appealed claims is not well founded.

Appellant also argues (brief, page 5) that Blais teaches a specific collar for maintaining the integrity of a hanked electric cording during storage and display, and that there is nothing in the fair teachings of Blais and Matthews that would have suggested or motivated one of ordinary skill in the art to combine their teachings in a manner that would have resulted in the claimed subject matter. We agree.

Like appellant, we find no basis in the combined teachings of Matthews and Blais for employing the cordset wrap of Blais for packaging the pillow of Matthews. In this instance,

assuming that a person of ordinary skill in the art were motivated to provide packaging for the pillow of Matthews, it is not apparent to us why such a person would have looked to the teachings of Blais, a reference which expresses no concern whatsoever for packaging a pillow, but is instead concerned with the specific needs associated with the packaging of a cordset formed into a hank. The broad reference in Blais to providing product information on the packaging for an article that differs substantially in both form and function from that disclosed by Matthews does not provide a reasonable basis for the examiner's conclusion that it would have been obvious to one having ordinary skill in the art to provide the pillow of Matthews with the wrap of Blais. Given the disparate natures of the inventions and objectives of Matthews and Blais, it is apparent to us that the examiner is using the hindsight benefit of appellant's own disclosure to extract from Blais an isolated teaching regarding providing product information to a would-be purchaser in order to justify the selective combination of the cordset wrap of Blais with the pillow of Matthews in an attempt to reconstruct a facsimile of appellant's claimed subject matter. However, as our court of review indicated in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

In light of the foregoing, we shall not sustain the standing rejection of claim 20, or claims 22, 24 and 25 that depend either directly or indirectly therefrom, as being unpatentable over Matthews and Blais.

Turning to the rejection of claims 23, 26, 27, 29, 30, 39 and 40 as being unpatentable over Matthews in view of Blais and Fraser, and the rejection of claim 28 as being unpatentable over Matthews in view of Blais, Fraser and Redewill, we note that the examiner has employed Blais in the same capacity as used in the rejection of claims 20, 22, 24 and 25, namely, as a basis for concluding that it would have been obvious to provide the pillow of Matthews with a central holder removably secured to the medial region of the pillow. This line of reasoning is no more persuasive here than it was with respect to the rejection of claims 20, 22, 24 and 25. As to the addition of Fraser and/or Redewill to the basic reference combination, Fraser's teaching of a labeling tag for suspending gloves or similar articles from a hanger rod, and Redewill's teaching of providing an additional protective cover (e.g., tote bag 110) for a pillow, do not overcome the basic deficiencies of Matthews and Blais discussed above. Accordingly, we also shall not sustain the standing rejections of 23, 26-30, 39 and 40.

The decision of the examiner is reversed.

REVERSED

Appeal No. 2002-0070  
Application No. 09/537,949

NEAL E. ABRAMS  
Administrative Patent Judge

LAWRENCE J. STAAB  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

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